

STATE OF TENNESSEE

Office of the Attorney General



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**ANDY D. BENNETT**  
CHIEF DEPUTY ATTORNEY GENERAL

**LUCY HONEY HAYNES**  
ASSOCIATE CHIEF DEPUTY  
ATTORNEY GENERAL

**PAUL G. SUMMERS**  
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207  
NASHVILLE, TN 37202

TN REGULATORY AUTHORITY  
DOCKET ROOM

**MICHAEL E. MOORE**  
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER  
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491  
FACSIMILE 615-741-2009

Reply to:  
Consumer Advocate and Protection Division

August 19, 2002

The Honorable Sara Kyle  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**RE: IN RE: GENERIC DOCKET ADDRESSING RURAL UNIVERSAL SERVICE**  
**Docket No.: 00-00523**

Dear Chairman Kyle:

Enclosed is an original and fourteen copies of our Reply Brief of the Attorney General to BellSouth's Motion for Reconsideration or in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Prehearing Officer Filed on November 8, 2000. We request that these documents be filed with the TRA in this docket. Additionally, all parties of record have been served copies of these documents. If you have any questions, kindly contact me at (615) 532-3382. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Shilina B. Chatterjee".

Shilina B. Chatterjee  
Assistant Attorney General

Enclosures

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IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE:   GENERIC DOCKET                   )  
          ADDRESSING RURAL                )  
          UNIVERSAL SERVICE              ) DOCKET NO. 00-00523

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**REPLY BRIEF OF THE ATTORNEY GENERAL TO BELL SOUTH'S MOTION FOR  
RECONSIDERATION OR, IN THE ALTERNATIVE, CLARIFICATION OF THE  
INITIAL ORDER OF HEARING OFFICER FOR THE PURPOSE OF ADDRESSING  
LEGAL ISSUES 2 AND 3 IDENTIFIED IN THE REPORT AND RECOMMENDATION  
OF THE PREHEARING OFFICER FILED ON NOVEMBER 8, 2000**

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The Attorney General of the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter for the State of Tennessee ("Attorney General"), submits this reply brief in response to BellSouth Telecommunications, Inc.'s ("BellSouth") *Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* filed on July 25, 2002.

The Attorney General objects to the relief sought by BellSouth and urges the Tennessee Regulatory Authority (hereinafter "TRA") to deny BellSouth's motion since it lacks merit and is not supported by legal authority.

**I. THE TENNESSEE REGULATORY AUTHORITY HAS AUTHORITY IN THIS MATTER TO ORDER BELL SOUTH NOT TO TERMINATE THE TOLL SETTLEMENT AGREEMENTS**

The TRA has the authority to regulate toll settlement agreements in the State of Tennessee. Tennessee Code Annotated § 65-5-201 states that the TRA "has the power . . . to fix just . . . tolls." These toll settlement agreements are within the regulatory framework established in Tennessee and governed by the TRA. Tennessee law also grants the TRA broad general supervisory and regulatory authority over all telecommunication service providers. Tennessee Code Annotated § 65-4-104 confers "general supervisory and regulatory power, jurisdiction and control over all public utilities . . ."

Additionally, the General Assembly granted the TRA broad authority to take the necessary action in order to ensure that all telecommunication service providers contribute to supporting Universal Service in the State of Tennessee. Tennessee Code Annotated § 65-5-207(a) provides:

In order to ensure the availability of affordable residential basic local exchange telephone service, the authority shall formulate policies, promulgate rules and issue orders which require all telecommunications service providers to contribute to the support of universal service.

To that end, the Authority has jurisdiction over the toll settlement agreements of BellSouth and the rural local exchange carriers. After BellSouth initiated the price regulation plan as stated in Tennessee Code Annotated §65-5-209, the net toll settlement revenues are now explicitly included in the non-basic revenues of BellSouth. BellSouth's non-basic revenues are subject to the Price Regulation Index ("PRI") and the Service Price Index ("SPI") permitting a maximum annual adjustment in the rates for interconnection services. The maximum annual adjustment in

the rates is subject to Authority review and approval according to statute.<sup>1</sup> Therefore, under the statutory framework, the TRA may prohibit BellSouth from terminating the toll settlement agreements.

BellSouth is incorrect in its assertion that the toll settlement agreements were never subject to Tennessee Public Service Commission (hereinafter "TPSC") or TRA regulatory oversight. The TRA (formerly the TPSC) has significant regulatory oversight in the substance of the contracts. The toll settlement agreements defined the revenues as "amounts chargeable to customers for intraLATA switched toll services (MTS, WATS and 800 Service) provided exclusively by exchange carriers under a common tariff filed by the Bell Company."<sup>2</sup> IntraLATA long distance rates were tariffed and approved through regulatory oversight. Further, numerous reductions in intraLATA long distance rates eliminated excess earnings for Bell as ordered by the TPSC.<sup>3</sup> was understood. However, it was understood that the independent companies access revenues derived from the common long distance rates would remain the same. Consequently, over time the access revenues received by the independent companies has exceeded the revenues received through long distance rates to the customers. In fact, this has occurred for over a decade. Therefore, simple logic compels that the settlements were subject to regulatory oversight because BellSouth would not have paid the access rates voluntarily.

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<sup>1</sup> Tennessee Code Annotated § 65-5-209(e).

<sup>2</sup> See attached Intralata Switched Toll Services Annex, Effective January 1, 1985. Exhibit C, Section A(1).

<sup>3</sup> "This renegotiation was brought about by a series of toll rate reductions that BellSouth made in order to address earnings issues and to prepare for the onset of toll competition." *BellSouth's Brief in Support of Motion for Consideration or in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Prehearing Officer Filed on November 8, 2000*, filed August 2, 2002 at page 2, paragraph 2.

## **II. THE TENNESSEE REGULATORY AUTHORITY IS MANDATED BY STATUTE TO DIRECT BELL SOUTH TO CONTINUE TO NEGOTIATE CURRENT TOLL SETTLEMENT AGREEMENTS**

By allowing BellSouth to terminate the toll settlement agreements, the rural local exchange carriers could be severely affected. The result will likely place a disproportionate burden on the rural providers and their ability to provide telecommunications service may be jeopardized. Tennessee Code Annotated § 65-5-207(c) provides that Universal Service must "be fair to all telecommunications service providers . . ." If BellSouth is allowed to terminate the toll settlement agreements it will undermine and interfere with the maintenance of Universal Service in rural areas in Tennessee and affect the ability of the rural local exchange carriers to provide telecommunications services to rural customers since it will significantly reduce the revenues available to support rural universal service. Since the toll settlement agreements set the rate at which BellSouth compensates the rural carriers for the use of the rural carriers' lines for calls made by and to BellSouth customers and since these provide significant revenue to rural telephone companies, if this revenue is lost it could lead to higher local rates for rural telephone customers. Ultimately, if these agreements are terminated it will affect a rural carriers ability to maintain affordable residential service in rural areas.

The General Assembly envisioned the burden of providing Universal Service would apply to all telecommunications carriers in the State of Tennessee. Tennessee Code Annotated § 65-5-207(a) indicates that Universal Service applies to "telecommunications service providers." Taken together, the intent of the legislature is apparent since they envisioned not only that the burden of rural Universal Service be fair to the telecommunications providers, but also that the statute applied to all telecommunication service providers. (Emphasis added).

There was no distinction envisioned or explicitly stated by the General Assembly. As a result, BellSouth has an obligation to continue the current toll settlement agreements in order to allow rural telecommunication providers to provide an essential service to the citizens of the State of Tennessee. Lastly and most importantly, as a matter of public policy it is imperative that the TRA take action in this docket and prevent BellSouth from terminating the toll settlement agreements since it could severely affect rural consumers in the State of Tennessee.

BellSouth's motion also misstates, "[a]lthough the TRA may have jurisdiction over the parties, it has no statutory authority to alter pre-existing toll settlement agreements between BellSouth and the rural carriers."<sup>4</sup> On May 9, 2001, the TRA affirmed the initial order of the hearing officer in a 3-0 decision "enjoining BellSouth from taking any measures to unilaterally terminate the existing intraLATA toll settlements arrangement/mechanism currently in effect between BellSouth and the Rural Carriers." The TRA has the statutory authority both over the parties and the pre-existing settlement agreements.

BellSouth inaccurately states that "[f]urther, the agreements are drafted to reflect clearly the fact that the parties never contemplated the TRA having any role in this respect."<sup>5</sup> (Emphasis added). The toll settlement agreements reflect clearly just the opposite conclusion, "[w]hen a cost study is required . . . . The cost study shall be governed by the separation principles and procedures set forth by National Association

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<sup>4</sup> BellSouth's Brief in Support of Motion for Consideration or in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Prehearing Officer Filed on November 8, 2000, filed August 2, 2002 at page 5, paragraph 2.

<sup>5</sup> Id. at page 6, paragraph 2.

of Regulatory Utility Commissioners (NARUC)."<sup>6</sup> Further, in Section C, paragraph 4, says "[d]epreciation expenses used will be the . . . rates authorized by the state Public Service Commission." BellSouth's contention that these agreements operate in some kind of vacuum is clearly false.

Moreover, BellSouth errs by stating that they are the insurer of revenue and the contracts are outdated for this competitive market. BellSouth stated, "[w]hile understanding the desire of the Independents to continue their current revenue streams in the Rural Universal Service docket, BellSouth cannot continue be (sic) the insurer of such revenue through these outdated contracts in this competitive market."<sup>7</sup> According to a recent 3.01<sup>1</sup> surveillance report (February 2002) as filed with the TRA, BellSouth is earning nearly 30% on shareholders equity in this competitive market in Tennessee. Therefore, it is financially obvious that BellSouth can afford to work with deliberation and care with the rural independent telephone providers and their customers in conjunction with the TRA to ensure that an appropriate Rural Universal Service Fund is established in a judicious manner. To do otherwise would bring needless local rate increase shock to thousands of rural customers and would result in a truly detrimental perception of the telecommunication companies and the TRA. In fact, TRA decisions in Docket No. 01-00451 and Docket No. 99-00995 reflect the forecasts of earnings which anticipate the current toll settlement arrangements.

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<sup>6</sup>  
paragraph 1.

See attached Intralata Switched Toll Services Annex, Effective January 1, 1985. Section C,

<sup>7</sup>  
*BellSouth's Brief in Support of Motion for Consideration or in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Prehearing Officer Filed on November 8, 2000, filed August 2, 2002 at page 7, paragraph 3.*

It is important that this review remain centered on the issue at hand. BellSouth's motion presents the procedural question of whether the TRA has the authority to act in this matter. The TRA's clear mandate from the Tennessee legislature is for the TRA to exercise control over the issue of universal service. Also, these toll agreements are an integral aspect of the maintenance of universal service. BellSouth is attempting to make points about how the TRA approaches universal service and how BellSouth's bottom line fits into this puzzle. Nevertheless, it is a puzzle which the TRA has the authority to piece together. The TRA's authority to use toll agreements for over 17 years in order to manage universal service is as equally vital as it is clear.

**III. TOLL SETTLEMENT AGREEMENTS ARE CONTRACTUAL ARRANGEMENTS THAT ARE WITHIN THE PURVIEW OF THE TENNESSEE REGULATORY AUTHORITY AND DO NOT INTERFERE WITH BELL SOUTH'S RIGHT TO CONTRACT BOTH UNDER FEDERAL AND STATE LAW**

BellSouth misstated the following in their Motion for Reconsideration or in the Alternative, Clarification of the Initial Order of the Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer:

BellSouth respectfully urges that there is no legal authority under which BellSouth can be ordered to continue to operate under agreements, which by their terms, are terminable, indefinitely while the TRA considers issues of Universal Service in a complex docket which is likely to continue for some time.<sup>8</sup>

The Attorney General respectfully submits that the legal authority was given to the TRA by the Telecommunications Act of 1996 (hereinafter "Act"), Sections 251 and 252. The legal authority is readily identifiable in several portions of Sections 251 and 252. These provisions of the Act

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<sup>8</sup>

Id. at p. 5.



give the TRA authority over any interconnection agreement in effect before the Act's passage.

The language of the statute states:

**PROCEDURES FOR NEGOTIATION, ARBITRATION,  
AND APPROVAL OF AGREEMENTS:**

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

Further, the toll agreements between BellSouth and various rural carriers are interconnection agreements.<sup>9</sup> Toll service arrangements are about interconnection and when there is dispute, the agreement cannot be unilaterally be terminated since it must "be submitted to the State commission."<sup>10</sup> Therefore, the TRA can order BellSouth to continue to operate under the current arrangements established in the toll service agreements.

Further, the TRA has authority concerning the toll service agreements since BellSouth, an incumbent local exchange carrier, has an obligation under federal law concerning interconnection agreements.<sup>11</sup> 47 U.S.C. 251(c) states:

**ADDITIONAL OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE  
CARRIERS:**

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<sup>9</sup> 47 U.S.C. 252(a)(1) (1996).

<sup>10</sup> Id.

<sup>11</sup> 47 U.S.C. § 251(c) (1996).

In addition to the duties contained in subsection (b), each incumbent local exchange carrier has the following duties:

- (1) DUTY TO NEGOTIATE. — The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection. The requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of such agreements.
- (2) INTERCONNECTION. — The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network —
  - (A) for the transmission and routing of telephone exchange service and exchange access;
  - (B) at any technically feasible point within the carrier's network;
  - (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
  - (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

Therefore, this indicates that the TRA has authority over such agreements that preceded the Act. Clearly, the Act gives the TRA exact authority which BellSouth attempts to negate by its claim that contract law, and only contract law, controls the eventual outcome of BellSouth's negotiations with the rural carriers. This assertion by BellSouth concerning interference with contractual rights is incorrect and is superseded by federal law since the TRA was invested with all necessary authority by the Act.

Also, the TRA has a regulatory mandate to maintain interconnection arrangements with the rural carriers and has the authority to require that agreements concerning these interconnection agreements not be terminated without TRA approval. Although contract language may provide for termination, the statutory and regulatory framework in the State of Tennessee dictates and supersedes contract law and BellSouth must obtain approval of their contracts from the TRA under Tennessee state law. Most importantly, their conclusion that the toll settlement contracts are not the subject of TRA authority is clearly erroneous.

Finally, the mere fact that BellSouth is seeking clarification of the current order and has not terminated the toll settlement arrangements is an indication that these arrangements cannot be unilaterally terminated without TRA approval. As such, the TRA has the statutory authority to require BellSouth to continue under the current agreements and should not allow BellSouth to terminate the agreements in order to satisfy the legislative mandate that was granted to the TRA by both the United States Congress and the Tennessee General Assembly.

#### **IV. BELLSOUTH ERRONEOUSLY ASSERTS THAT INCREASED COMPETITION AND AN UNSUSTAINABLE COMPETITIVE ENVIRONMENT WARRANTS TERMINATION OF THE TOLL SETTLEMENT AGREEMENTS**

BellSouth incorrectly states that the CLECs are competing head-to-head with BellSouth.<sup>12</sup> Recent reports indicate that BellSouth is still the dominant

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<sup>12</sup> *BellSouth's Brief in Support of Motion for Consideration or in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Prehearing Officer Filed on November 8, 2000, August 2, 2002 at p. 3.*

telecommunications provider in the State of Tennessee. In fact, in the State of Tennessee BellSouth's competitors serve only about 12% of all lines.<sup>13</sup> Therefore, BellSouth's penetration is over 80% in the State of Tennessee and does not suggest a fully competitive environment. Additionally, even in the realm of business customers, BellSouth still dominates and has over 65% of the market in Tennessee.<sup>14</sup> Therefore, there is not an unsustainable competitive environment and it is not necessary to terminate the toll settlement agreements. Thus, the TRA should not permit termination of the toll settlement agreements and require BellSouth to continue under the current arrangements.

Finally, although the issues in this docket have been clearly identified and appropriately decided, it is apparent that BellSouth insists upon engaging in negotiation tactics which rely on contract termination provisions inconsistent with the TRA's clear legislative mandate, to harm the welfare of rural Tennesseans. Therefore, this office respectfully requests and prays that the TRA deny BellSouth's motion and establish a Rural Universal Service Fund in a timely and judicious manner for the benefit of consumers and its corporate citizens.

### CONCLUSION

For the foregoing reasons, the Attorney General of the State of Tennessee respectfully requests that TRA deny BellSouth's *Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of*

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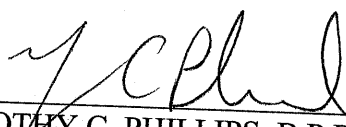
<sup>13</sup> *BellSouth Offers Hints of What's To Come*, The Tennessean, May 25, 2002, at 1E.

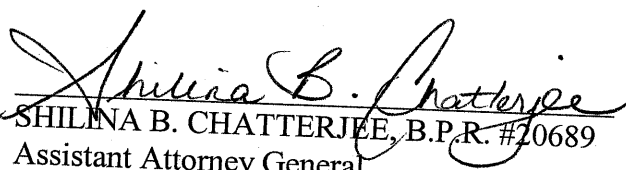
<sup>14</sup> *Id.* (Competitors serving business customers in Tennessee account for 32% of the market).

*Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of Pre-Hearing Officer Filed on November 8, 2000.*

Respectfully submitted,

PAUL G. SUMMERS  
Attorney General and Reporter

  
TIMOTHY C. PHILLIPS, B.P.R. #12751  
Assistant Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 741-3533

  
SHILPA B. CHATTERJEE, B.P.R. #20689  
Assistant Attorney General  
State of Tennessee  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 532-3382

DATED: August 19, 2002

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on parties below via U.S. Mail, postage prepaid, this August 19, 2002.

Lera Beall  
TEC Services, Inc.  
1309 Louisville Avenue  
Monroe, Louisiana 71201

Gregg Sayre  
Frontier Communications  
180 South Clindon Avenue  
Rochester, NY 14646

Charles Welch, Esq.  
Farris, Mathews, et al.  
205 Capitol Blvd., #303  
Nashville, TN 37219

Mr. David Espinoza  
Millington Telephone Company  
4880 Navy Road  
Millington, TN 38053

Jon Hastings, Esq.  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

James R. Kelley, Esq.  
Neal & Harwell, PLC  
2000 First Union Tower  
150 Fourth Avenue North  
Nashville, TN 37219-2498

Henry Walker, Esq.  
Boult, Cummings, et al.  
P. O. Box 198062  
Nashville, TN 37219-8062

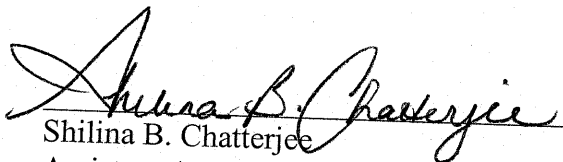
James Wright, Esq.  
United Telephone-Southeast  
14111 Capitol Blvd.  
Wake Forest, NC 27587

Dan Elrod, Esq.  
Miller & Martin  
150 4th Avenue North, #1200  
Nashville, TN 37219

James Lamoureux, Esq.  
AT&T  
1200 Peachtree Street, NE  
Atlanta, GA 30309

Donald L. Scholes, Esq.  
Branstetter, Kilgore, et al.  
227 Second Avenue North  
Nashville, TN 37219

Stephen G. Kraskin, Esq.  
Kraskin, Lesse & Cosson, LLP  
2120 L Street SW, Suite 520  
Washington, DC 20037

  
Shilina B. Chatterjee  
Assistant Attorney General

ANNEX \_\_\_\_\_

INTRALATA SWITCHED TOLL SERVICES ANNEX

Effective: January 1, 1985

This Annex between SOUTH CENTRAL BELL TELEPHONE COMPANY, having its principal place of business in Birmingham, Alabama, herein called the Bell Company, and the Independent Company as identified in the Agreement for the Provision of Telecommunications Services and Facilities, sets forth the terms and conditions regarding the provision of intraLATA switched toll services.

SECTION I

TRAFFIC COVERED BY THIS ANNEX

IntraLATA Switched Toll Services are defined as IntraLATA Message Telecommunications Services (MTS), including optional calling plans, Outward Wide Area Telecommunications Services (WATS) and 800 Service, which are furnished within LATAs in which both the Bell Company and the Independent Company operate in whole or in part by the system of the Independent Company and by the system of the Bell Company and are furnished exclusively by exchange carriers under uniform toll tariffs.

When Independent-to-Independent (I-I) or Bell-to-Independent (B-I) traffic ceases to be furnished under toll rate schedules identical for both the Independent Company and the Bell Company or when either I-I or B-I traffic becomes an Extended Area Service (EAS) or other local service offering, such traffic will no longer be covered by this Annex. No compensation to the Independent Company will be made by the Bell Company for such traffic under this Annex.

## SECTION II DEFINITIONS

For purposes of this Annex:

The System of the Independent Company comprises the exchange areas, exchanges, toll stations and toll circuit groups operated by the Independent Company and associated with LATAs in which the Bell Company operates including systems of local wireline exchange carriers associated within the same LATA other than the Bell Company with which the Independent Company connects, as specified in Exhibit A of this Annex.

The System of the Bell Operating Company comprises the exchange areas, exchanges, toll stations and toll circuit groups operated by the Bell Company, and will include systems of local wireline exchange carriers within the same LATA other than those identified as a part of the system of the Independent Company, as specified in Exhibit A.

IntraLATA Message Telecommunications Services (MTS) includes the facilities used and services rendered in furnishing telephone toll service communications between customer premises in different exchange areas within a LATA, in accordance with the schedules of charges, regulations and conditions stated in the uniform statewide intraLATA exchange carrier toll tariff(s).

IntraLATA Outward Wide Area Telecommunications Service (WATS) includes facilities used and service rendered in furnishing telephone toll service communications from an access line to other stations within a specified area in a LATA in accordance with the schedules of charges, regulations and conditions stated in the exchange carrier toll tariff(s).



IntraLATA 800 Service includes the facilities used and services rendered in furnishing 800 Service from stations within a LATA to a customer premises in accordance with the schedules of charges, regulations and conditions stated in the exchange carrier toll tariff(s).

### SECTION III

#### INDEPENDENT COMPANY EXCHANGES

The exchanges of the Independent Company system covered by this Annex are listed in Exhibit A attached hereto.

### SECTION IV

#### PHYSICAL CONNECTION

The Bell Company and the Independent Company will connect and maintain the connections of their respective systems at the point or points listed in Exhibit A during the term of this Annex. Neither party will, without the written consent of the other, connect the facilities of the other party with any facilities other than as indicated in Exhibit A.

### SECTION V

#### ROUTING OF TRAFFIC

The traffic interchanged under this Annex will be routed as indicated in Exhibit A to this Annex. Changes in routing must be agreed to in writing by the parties before becoming effective.

SECTION VI  
TRAFFIC RECORDING AND OPERATOR FUNCTIONS

The functions required to provide intraLATA switched toll services specified hereunder, e.g., recording and operating of intraLATA MTS, WATS, and 800 Service, shall be performed as shown in Exhibit B attached hereto.

SECTION VII  
CONSTRUCTION AND PROTECTION OF PLANT

Each party will construct, equip, maintain and operate its system so as to provide adequate facilities for the efficient provision of good service to the public at all times.

Each party will take reasonable precautions in the location, construction and maintenance of its facilities for protection against hazard and interference from power lines and other sources.

SECTION VIII  
MONTHLY COMPENSATION

Each party will collect all charges payable by its customers for intraLATA switched toll services in accordance with related tariff provisions and will account for and be responsible for such charges. Each party will keep adequate records of all collections, payments and other transactions hereunder, and such records will be subject to inspection by the other party upon reasonable request. Each party will furnish to the other such information as may be required for monthly compensation purposes.

Compensation statements hereunder will be rendered monthly by the Bell Company to the Independent Company and remittance in full, including disputed amounts, will be made by the debtor company by the last work day of the month following the month being settled. If a dispute is substantiated in favor of the exchange carrier, the fund will return the disputed amount plus interest (.05 percent per day). Disputes which cannot be resolved should be referred to the State Fund Oversight Committee for resolution.

#### SECTION IX BASIS OF COMPENSATION

Monthly compensation due each party for facilities furnished and services provided hereunder will be determined as provided in Exhibit C attached hereto and made a part hereof.

#### SECTION X DEFAULTS OR VIOLATIONS

If either party connects the facilities of the other party in any manner other than as specifically provided herein, this Annex is subject to immediate termination upon written notice.

#### SECTION XI TERM OF ANNEX

This Annex will become effective on the date specified and will continue in force thereafter, until terminated upon thirty (30) days prior written notice with or without cause by either party. This Annex may be amended from time to time upon written agreement of the parties.

EXHIBIT A  
POINTS OF CONNECTION AND ROUTING  
INTRALATA SWITCHED TOLL SERVICES ANNEX

Effective: January 1, 1985

Attached to and made a part of the IntraLATA Switched Toll  
Services Annex effective January 1, 1985.

<u>EXCHANGES</u>	<u>INTRALATA TANDEM POP</u>	<u>POINTS OF CONNECTION</u>	<u>BELL COMPANY LATA</u>
		<u>V</u> <u>H</u>	

EXHIBIT B  
TRAFFIC RECORDING AND OPERATOR FUNCTIONS  
INTRALATA SWITCHED TOLL SERVICES ANNEX

Effective: January 1, 1985

Attached to and made a part of the IntraLATA Switched Toll Services Annex effective January 1, 1985.

From the effective date of this Exhibit, the Bell Company will perform or cause to be performed the recording and operator functions required for handling the traffic covered by this Annex, except that the Independent Company will perform the functions listed below.

Compensation for the provision of recording and operator functions, by one company for the other, is covered under separate Annexes.

<u>Traffic Originating At</u>	<u>Type of Traffic</u>	<u>Function(s) Performed</u>
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EXHIBIT C  
BASIS OF COMPENSATION  
INTRALATA SWITCHED TOLL SERVICES ANNEX  
Effective: June 1, 1985

Attached to and made a part of the IntraLATA Toll Switched Services Annex effective January 1, 1985.

This Exhibit sets forth the basis of compensation for all traffic covered by the IntraLATA Switched Toll Services Annex.

Compensation amounts which the Independent Company and the Bell Company are to receive for their participation in the handling of intrastate intraLATA switched toll services, as defined in the Annex shall be determined as set forth below.

A. For the purpose of compensation under this Exhibit:

1. Revenues are amounts chargeable to customers for intraLATA switched toll services (MTS, WATS and 800 Service) provided exclusively by exchange carriers under a common tariff filed by the Bell Company and concurred in by the Independent Company. Uncollectible revenues and revenue associated with official company toll calls are included. Each party accepts the responsibility for the collection efforts on revenues billed by it and on calls originating on its system which are returned under the Responsible Company Toll Investigation Plan.

2. Revenue Distribution Fund means a statewide common fund administered on a monthly basis containing all the intrastate intraLATA switched toll services revenues of the fund participants whereby each participant in the fund is reimbursed, from the fund, for costs incurred in the provision of said services and receives a share of the balance of any residual revenues.
3. Fund Participant means the Bell Company or an Independent Company which is a direct party to the sharing of intraLATA switched toll services revenues via the statewide revenue fund.
4. Fund Administrator which shall be the Bell Company is charged pursuant to the terms and conditions of this Annex with the establishment of administration procedures and the determination of compensation which each participant is entitled to receive from the revenue fund.
5. Access function means a service function performed for and necessary to the provision of intraLATA switched toll service including switched access service similar to Feature Group C, billing and collection service, and directory assistance service as defined in the Exchange Carrier Association interstate access tariffs filed with the Federal Communications Commission. Access functions include recording, rating, billing, end office switching, transport, carrier common line, and toll directory assistance.

6. Network function means a service function performed for and necessary to the provision of intraLATA switched toll service but which is not an access function as defined under the access tariffs.

The service function may be:

- a. Services provided by operators, including but not limited to, intraLATA toll operator assistance, toll operating, and intra-NPA Directory Assistance (DA) and/or,
- b. network functions, i.e., intraLATA tandem switching and/or line haul between the assumed POP locations for intraLATA switched toll service.

- B. Each fund participant shall receive monthly as its share of the revenues from intraLATA switched toll services, as defined on page 1 herein, for the period covered and in an amount to be determined as follows:

- 1. The Independent Company and all other fund participants shall remit the revenues as defined in Paragraph A.1. above to a common revenue fund via the Fund Administrator.



2. Each participant receives from the fund its access function compensation.

a. The amount of compensation is determined by applying the end office access charge tariff traffic sensitive, and billing and collection rates for those functions provided by the participant to the current month's intraLATA switched toll traffic provided under this Annex. The access tariff rates used in this calculation will be those approved and in effect with the Federal Communications Commission as of June 1, 1985, for each participant. For purposes of determining intraLATA access charges, a point of presence (POP) will be assumed to exist at the end office side of each intraLATA tandem switch for each end office served by the switch.

b. Where local transport is jointly provided and both companies involved have identical transport rates, the end office company will receive its local transport compensation by applying a Transport Split Factor (TSF) to the total calculated local transport charges for a given end office. The TSF will be computed using the following formula:

$$TSF = (1/2) \times 0.70^* + (E/(E + P)) \times .30^*$$

where E represents the airline mileage from the end office to the point of connection and where P represents the airline mileage from the intraLATA POP to the point of connection.

The POP Company shall receive its local transport compensation by applying the inverse TSF (1-TSF) to the total calculated local transport charges for a given end office.

- c. Where local transport is jointly provided and the two companies involved have different transport rates, a composite equivalent rate will be developed for application to the minutes transversing the joint transport facility. The composite equivalent rate will be developed in a manner that will cover each company's transport rate for the portion of transport that it provides. In determining each company's transport rate for the portion of transport provided, the "seventy percent (70%) non-distance sensitive loading philosophy" employed in Paragraph 2.b. above will be utilized where appropriate. After determining each company's transport

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\* Approximately seventy percent (70%) of the total transport cost is attributable to carrier/radio terminals while the remaining thirty percent (30%) is attributable to line facilities.

rate for the portion of transport provided, a Transport Split Factor (TSF) will be calculated that will represent the end office company's portion of total transport charges. The POP company shall receive its local transport compensation by applying the inverse TSF (1-TSF) to the total local transport charges for a given end office.

- d. Until such time as the parties develop the means to identify originating intraLATA OUTWATS usage by end user serving wire center, each company shall receive a percent of its monthly intrastate, intraLATA billed OUTWATS usage revenue as a surrogate for originating carrier common line access compensation. The percent to be used shall be 25% based on a composite ratio of carrier common line compensation per access minute compared to OUTWATS customer billed usage revenue per access minute. Since the wire centers involved with the traffic sensitive elements of OUTWATS usage are easily identified, access compensation for the traffic sensitive elements of OUTWATS usage will be handled as described in Paragraphs B.2.a. through B.2.c. above. In addition, the OUTWATS billing company will be paid Billing and Collection compensation as referenced in Paragraph B.2.a. above.

Carrier common line compensation for terminating OUTWATS usage will be handled as described in Paragraphs B.5. and B.6. (as appropriate) below.

- e. Until such time as the parties develop the means to identify terminating 800 Service usage by end user serving wire center, each company shall receive a percent of its monthly intrastate, intraLATA billed 800 Service usage revenue as a surrogate for terminating carrier common line access compensation.

The percent to be used shall be 25% based on a composite ratio of carrier common line compensation per access minute to 800 Service customer billed usage revenue per access minute. Due to the many complexities associated with properly processing 800 Service usage records, compensation for the traffic sensitive and originating carrier common line elements for 800 Service usage will be accomplished through residual revenue distribution as outlined in Paragraph B.7. below. In addition, the 800 Service billing company will be paid Billing and Collection compensation as referenced in Paragraph B.2.a. above.

3. The expenses incurred by the Fund Administrator in the administration of the revenue distribution fund shall be reimbursed from the fund. The expenses will be monitored and subject to review by the Revenue Distribution Fund Oversight Committee.

4. Each participant will receive from the fund its monthly compensation associated with its network functions as defined in Paragraph A.6. above.

The monthly network function compensation will be determined by:

- a. An annual cost study conducted under the principles described in Paragraph C following;
  - b. Dividing the network function cost as determined in the annual cost study by the total access minutes of use (utilizing such network functions) for the cost study period, in order to obtain a network cost per minute of use; and
  - c. Multiplying the network cost per minute of use by the total access minutes of use (utilizing such network functions) for the monthly settlement period.
5. The Independent Company will receive a company specific residually computed carrier common line rate of \_\_\_\_\_ cents per minute applied to the originating and terminating access minutes of intraLATA traffic in which it participates (excluding all 800 Service usage and originating OUTWATS usage).

6. The Bell Company will receive a company specific residually computed carrier common line rate of \_\_\_\_\_ cents per minute applied to the originating and terminating access minutes of intraLATA traffic in which it participates (excluding all 800 Service usage and originating OUTWATS usage).
  7. The balance of revenues remaining in the fund after the payments made under Paragraphs B.2. through B.6. above will be allocated to the participants on the basis of the relative number of access lines of each participant. If insufficient revenues are available to cover these payments, the shortfall will be allocated among the participants on the basis of relative number of access lines.
  8. Any fund participant who directly or through an affiliated entity engages in a facility based interexchange carrier venture that is competing for the intraLATA toll revenues shared by the fund participants will not be entitled to the residual revenue distribution described in Paragraph B.7. above.
- C. When a cost study is required as described in Paragraph B.4. above, the study shall be conducted according to the principles outlined below:

1. The cost study shall be governed by the separation principles and procedures set forth in the then effective National Association of Regulatory Utility Commissioners (NARUC) - FCC Separations Manual, Part 67 of the FCC's Rules and Regulations and Part 69 of the FCC's Rules and Regulations.
2. Investments, reserves, and expenses included in the cost study shall be those recorded on the participant company's book in accordance with the FCC Uniform System of Accounts, Part 31. Only those investments, reserves and expenses that are mutually agreed upon as incurred, used and useful for the provision of the intraLATA switched toll services covered by this Exhibit shall be included in the cost study.
3. A 12.75 percent rate of return on net plant will be applied in the study.
4. Depreciation expenses used will be the booked depreciation expenses of the participant company for the study period at the rates authorized by the state Public Service Commission.
5. Federal and State Income Taxes shall be computed on the basis of the statutory rates applicable to the participant company during the study period, considering fixed charges and return as determined in Paragraph C.3. above. Fixed charges of the participant company assigned to the study shall be determined by multiplying the participant company's total fixed charges for the study period by the ratio of the net book costs

assigned to the study to the total net book costs of the participant company for the study period. The fully allocated amounts of all statutory adjustments used by the participant company for determining Federal and State Income Taxes applicable to the study period will be used in determining net taxable income for compensation under this Exhibit.

Reductions from Federal Income Tax liability resulting from Investment Tax Credits must be treated as study adjustments in the same manner as accounted for by the parties.

6. Traffic studies shall be made in the participant company's switches as mutually selected and in accordance with procedures mutually agreed upon by both parties. Operator Work Time Values used will be the applicable industry standard.

D. The Revenue Fund shall be administered on a calendar month basis utilizing calendar month toll revenues, messages and usage. The Fund Administrator shall coordinate the monthly gathering of any required data from the participant companies and produce statements for the fund as detailed below:

1. Each participant shall report or have reported to the Fund Administrator its calendar month toll revenues, messages and usage by the tenth work day following the close of that calendar month.



2. The Fund Administrator shall provide by the twelfth work day following the close of the calendar month a statement for each participant detailing the following:

- a. Toll Revenues due the fund from the participant.
- b. Access Charge based compensation due the participant from the fund.
- c. Network costs due the participant from the fund.
- d. Residual share due the participant from the fund.
- e. Net cash flow to or from the fund.

A worksheet showing the calculation of the residual compensation amount per access line will also be supplied.

3. Each participant company having a cash flow to the fund shall tender payment in full to the Fund Administrator by the last work day of the month following the close of the calendar month under study. Subject to the discretion of the Fund Administrator, a late payment fee of .05 percent per day may be charged on balances due after the above date.

4. The Fund Administrator will send payment to each participant company having a cash flow from the fund on the last work day of the month following the close of the calendar month under study.

5. Any studies or data supporting amounts received from the fund by any participant will be subject to review by the fund administrator and/or any other fund participants.

E. A State Revenue Distribution Fund Oversight Committee will be established and will be comprised of the Fund Administrator and six Independent Company representatives as appointed by the State Telephone Association. The Committee responsibilities will include: review of the Fund Administration procedures and operations to insure compliance with this Annex; review of the administration expenses; provision of input to the Bell Company's toll rate filings; monitoring the network costs charged to the fund; and making recommendations on any disputes brought before the committee.